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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

NAGUI MANKARUSE,

Plaintiff and Appellant,

v.

INTEL CORPORATION et al.,

Defendants and Respondents.

G056143

(Super. Ct. No. 30-2016-00884058)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Craig L. Griffin, Judge. Affirmed.

Nagui Mankaruse, in pro. per., for Plaintiff and Appellant.

Munger, Tolles & Olson, Peter E. Gratzinger and Carolyn Luedtke for Defendants and Respondents.

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Plaintiff and appellant Nagui Mankaruse, a designated vexatious litigant, filed an action against defendants and respondents Intel Corporation (Intel), Acer America Corporation, Daniel Patrick Docter, Andy Bryant, Matthew Robert Hulse, and Arvind Sodhani (collectively defendants) for misappropriation of trade secrets and a variety of other causes of action, all based on the claim defendants improperly used his trade secrets in connection with their central processing unit (CPU) coolers.

Plaintiff appeals from a judgment entered after the court sustained without leave to amend a demurrer to the third amended complaint (TAC). The court ruled all causes of action were barred by the statute of limitations. In addition, it relied on other deficiencies specific to the causes of action, as discussed below.

We agree all causes of action are barred by the statute of limitations and suffer from the other defects set out in the court's order, and there is no reasonable probability plaintiff could amend to state a viable claim. Thus, we affirm.

FACTS AND PROCEDURAL HISTORY¹

According to plaintiff, he is the inventor and owner of trade secret technology for CPU coolers. He is the founder and president of Delta Engineers (Delta), not a party to this action. In 2004 Delta disclosed to Intel certain alleged trade secret technologies for cooling a CPU. At the time of the disclosure, Intel and Delta executed a Corporate Non-Disclosure Agreement (NDA), whereby Intel agreed to maintain the confidentiality of the secret information disclosed to it. At the same time those parties also executed a letter agreement (Letter Agreement), which plaintiff erroneously calls a hold harmless agreement, explaining they were discussing "a potential business

¹ The facts are taken from the various complaints and documents of which the trial court took judicial notice. As we are required, for purposes of considering a demurrer we accept properly pleaded allegations of fact as true. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081 (*Schifando*).)

transaction.” The Letter Agreement essentially stated that, except for the NDA, there was no binding agreement between the parties.

In 2004 after the NDA and Letter Agreement were signed, Intel advised plaintiff it was not prepared to enter into a business transaction concerning Delta’s technology. In 2007 plaintiff had a meeting with Intel about Delta’s technology. Thereafter, Intel again advised plaintiff it was not interested.

Plaintiff was also the president of American Technology Incorporated (ATI), the “prior holder[]” of the alleged trade secrets. In April 2010 ATI filed a patent infringement action in a United States District Court in Florida (Patent Action) against 15 resellers of computer components; Intel was not a named defendant. The Patent Action alleged the defendants therein infringed on a patent owned by ATI,² referred to as the ’512 Patent, by incorporating the patented product in cooling devices, including those bearing an Intel brand. The device described in the ’512 Patent was “a cold plate assembly” comprised of “three modules” that included “a thermally conductive base,” “individual heat pipes” and “heat exchangers.” An expert’s declaration in the Patent Action listed several Intel cooling devices, including the DBX-B, as “accused products.”

After ATI’s counsel moved to withdraw from representation, ATI’s motion to dismiss the Patent Action with prejudice was granted in June 2011.

In April 2012 plaintiff wrote to Intel following up on the 2004 and 2007 “encounters” between Delta and Intel and accusing Intel of infringing on the ’512 Patent. Intel denied any wrongdoing including misappropriating trade secrets or theft of intellectual property.

In 2015 plaintiff purchased an Intel DBX-B cooler (Intel CPU Cooler) from Amazon and after examining it determined it was infringing on his trade secrets.

² Plaintiff is shown as the inventor on the patent.

In October 2016 plaintiff filed his original complaint for misappropriation of trade secrets, fraud, unfair competition, and conspiracy and then filed a first amended complaint (FAC),³ including the same causes of action and adding causes of action for breach of NDA, breach of implied covenant, breach of fiduciary duty, unfair business practices, breach of good faith and fair dealing [*sic*], abuse of process, unjust enrichment, and punitive damages, all essentially arising from alleged misappropriation of trade secrets for high performance cooling devices for CPU's. Plaintiff alleged he communicated with Intel in the summer of 2012 and it "denied any illegal violation, misappropriation of the Trade Secrets technologies and Intellectual property theft," and plaintiff believed the lies.

Defendants demurred on several grounds, including the statute of limitations, arguing the claims accrued in the summer of 2012 and the action was not filed within four years thereafter, four years being the longest statute of limitations applicable to the causes of action. In support of the demurrer defendants asked the court to take judicial notice of the Patent Action and related documents, which it did.⁴

In his opposition, plaintiff argued he did not suspect defendants of wrongdoing until he bought the Intel CPU Cooler in 2015.

The court sustained the demurrer to the FAC with leave to amend. In its ruling it addressed plaintiff's claim about when he first acquired knowledge, noting it was not alleged in the FAC. In addition, the court stated it was unclear whether Intel was using the same CPU cooler in 2012 or 2103. It also observed that an inference could be drawn from the FAC that plaintiff suspected defendants had engaged in wrongful conduct

³ Although not in the record the respondent's brief states defendants filed a demurrer to the original complaint and the FAC was filed before the hearing.

⁴ These included the complaint in the Patent Action; the '512 Patent; the expert's report submitted by ATI, the plaintiff in the Patent Action; the motion by ATI's counsel to withdraw; and the order of dismissal of the Patent Action.

when he accused them in 2012. The court explained this would normally “start the clock running,” but “the claims might be timely” if plaintiff had “additional evidence to show” Intel’s denials were true and the improper conduct did not occur until later. (Italics omitted.)

Plaintiff then filed a second amended complaint (SAC) for misappropriation of trade secrets, breach of NDA, breach of implied contract, fraud, breach of fiduciary duty, unfair business practices, breach of good faith and fair dealing [*sic*], and conspiracy. Plaintiff again alleged he sent a letter to Intel in April 2012 asking it “to intervene and solve the conspiracy issues of Intel during the US ’512 [Patent Action] vs. Fifteen companies . . . in which Intel was NOT a party In the same letter [plaintiff] was following up on Intel and Delta encounters of 2004 and 2007 and whether Intel was an indirect infringer on the ’512 US Patent with using language as if he actually knows that Intel is using the US Patent ’512 technologies in fact.” He also alleged that in 2010 he believed the 15 defendants in the Patent Action were infringing on the ’512 Patent. He further claimed attorneys for ATI “were compromised by Intel money in the litigation” because Intel had helped pay for defense of the Patent Action. Further, “[t]here were incidents [plaintiff] found out conspiracy and fraud by two defendants in the Patent Action] but they were not able to do it because [plaintiff] was careful and usually had advanced knowledge of such wrongdoing.” He again pleaded he found the Intel CPU Cooler in 2015 while browsing on Amazon and after examining it, discovered it used the technologies he disclosed to Intel in 2004 and 2007.

In sustaining defendants’ demurrer based on the statute of limitations, the court noted plaintiff’s admission he suspected Intel of wrongdoing in 2012 but did nothing about it until 2015 and then filed this action in 2016. Plaintiff’s allegation he did not discover Intel’s alleged wrongdoing until 2015 raised an inference plaintiff could not have discovered an infringement sooner because Intel was not using the Intel CPU Cooler before 2015. But plaintiff failed to allege any facts to show he could not have discovered

the alleged wrongful conduct sooner. The court believed it unlikely plaintiff would be able to cure the defect, but gave him “one last” opportunity to do so.

Plaintiff then filed the TAC, setting out the same causes of action as in the SAC. He repeated the allegation he sent a letter to Intel in 2012 asking it “to intervene and solve the conspiracy issues of Intel during the US ’512 [Patent Action]. He omitted the allegation made in the SAC that in that letter he was following up about the conversations between Intel and Delta in 2004 and 2007 “and whether INTEL was an indirect infringer on the ’512 US Patent with using language as if he actually knows that Intel is using the US Patent ’512 technologies in fact.”

Plaintiff also alleged he first became suspicious of Intel in January 2015 when he found the Intel CPU Cooler on Amazon, examined it, and discovered it was using the trade secrets disclosed to Intel in 2004 and 2007. Plaintiff pleaded he “was always doing continuous Due Diligence, searching the web to find a respectable company to license the Trade Secrets technologies and Intellectual Property among other inventions before and after 2004.”

Defendants demurred to the TAC on the statute of limitations and other grounds. In his opposition, plaintiff attached several documents, including letters he sent to Intel in 2012, which he maintained supported his delayed discovery claim. In one letter plaintiff asserted the cooling technology disclosed to Intel in 2004 and 2007 had “surfaced in the world market for cooling CPU’s” and was being sold worldwide to cool Intel CPU’s, which had a market share of almost 90 percent. The letter also stated Intel was actively inducing infringement of the ’512 Patent “by all the computer integration companies in the world uses [*sic*] this two[-]phase cooling technology . . . that was developed after [plaintiff’s] encounter with” Intel in 2004 and 2007. Plaintiff demanded Intel license Patent ’512. In taking judicial notice the court explained those letters “demonstrate[d] that plaintiff was suspicious of trade secrets and patent infringement by Intel and others back in 2012.” (Boldface omitted.)

The court sustained the demurrer to the TAC without leave to amend. It acknowledged plaintiff's claim "he had no reason to sue Intel" until 2015 when he learned it was selling coolers using plaintiff's alleged trade secrets. But the Patent Action in 2010 "assumed use of the cooling systems. Even though Intel was not a party to that lawsuit, its potential wrongdoing was on point." The court declined to allow plaintiff further leave to amend because there was "no reason to believe plaintiff will cure this, and to date his efforts were null due to the sham pleading doctrine revitalizing omitted averments."

DISCUSSION

1. Standard of Review and General Principles

An order sustaining a demurrer without leave to amend is reviewed de novo. (*Del Cerro Mobile Estates v. City of Placentia* (2011) 197 Cal.App.4th 173, 178.) "[W]e treat the demurrer as admitting all material facts properly pleaded, but do not assume the truth of contentions, deductions or conclusions of law" (*National Union Fire Ins. Co. of Pittsburgh, PA v. Cambridge Integrated Services Group, Inc.* (2009) 171 Cal.App.4th 35, 43) or speculative allegations (*Rotolo v. San Jose Sports & Entertainment, LLC* (2007) 151 Cal.App.4th 307, 318, disapproved on another ground in *Verdugo v. Target Corp.* (2014) 59 Cal.4th 312, 333, 334, fn. 15). We may consider any matter of which the court may take judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) "[W]e give the complaint a reasonable interpretation, and read it in context." (*Schifando*, *supra*, 31 Cal.4th at p. 1081.) If the demurrer can be sustained on any ground raised, we must affirm. (*Ibid.*)

"Under the doctrine of truthful pleading, the courts 'will not close their eyes to situations where a complaint contains allegations of facts inconsistent with attached documents, or allegations contrary to fact which are judicially noticed.'" (*Hoffman v. Smithwoods RV Park, LLC* (2009) 179 Cal.App.4th 390, 400; see *Brakke v. Economic Concepts, Inc.* (2013) 213 Cal.App.4th 761, 767 ["[w]hile the 'allegations [of a

complaint] must be accepted as true for purposes of demurer,’ the ‘facts appearing in exhibits attached to the complaint will also be accepted as true and, if contrary to the allegations in the pleading, will be given precedence’”].) In addition, we must disregard facts that contradict facts alleged in a prior pleading. (*Larson v. UHS of Rancho Springs, Inc.* (2014) 230 Cal.App.4th 336, 344; *Smyth v. Berman* (2019) 31 Cal.App.5th 183, 195 [in amended complaint, plaintiff may not “‘omit harmful allegations . . . from previous complaints’”; if plaintiff does not provide “‘plausible’ explanation” for omission, “court will take judicial notice of the harmful allegations”].)

We review a decision to disallow leave to amend for abuse of discretion. (*Schifando, supra*, 31 Cal.4th at p. 1081.)

2. Judicial Notice

Although unclear, it appears plaintiff may be challenging the trial court’s reliance on judicially noticed documents in sustaining the demurrer to the TAC. He argues defendants did not allege in their demurrers “Plaintiff’s Complaint” failed to state facts sufficient to constitute a cause of action or that the complaint was uncertain, “as required under” Code of Civil Procedure section 430.10.

This is incorrect for at least two reasons. First, defendants did so allege. Second, those are only two of several grounds on which a demurrer can be based. They are not “required.”

Plaintiff argues the demurrer to the TAC is “based solely on impermissible use of extrinsic evidence, an unsigned, unauthenticated paper.” He does not identify the referenced document. He asserts it was improper for the court to consider anything not shown on the face of the complaint, but then admits the court may consider matters subject to judicial notice. This argument fails.

In ruling on the demurrers the court took judicial notice on two occasions. Once was of letters plaintiff sent to Intel in 2012, which plaintiff submitted with his opposition to the demurrer to the TAC to support his claim of delayed discovery. We

assume plaintiff is not challenging this ruling. Even if he were, however, the claim would not be well taken since plaintiff asked the court to consider the documents. (*Santa Clara Waste Water Co. v. Allied World National Assurance Co.* (2017) 18 Cal.App.5th 881, 888 [invited error doctrine prevents challenge to ruling made at party's request].)

In ruling on the demurrer to the FAC the court granted defendants' request for judicial notice of documents in the Patent Action and the original complaint. In granting the request the court correctly ruled it could not take judicial notice of the truth of the "factual averments" in the documents. (*Kilroy v. State of California* (2004) 119 Cal.App.4th 140, 145 [court may take judicial notice of existence of documents in court file but not truth of hearsay]; *Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375 [judicial notice of public records proper but not truth of matters stated in records].) But in taking judicial notice of "a legally operative document—like a contract—the court may take notice not only of the fact of the document and its recording or publication, but also facts that clearly derive from its legal effect." (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 754, italics omitted); *In re Tanya F.* (1980) 111 Cal.App.3d 436, 440 [court may take judicial notice of truth of facts in court orders].)

We are not certain if plaintiff is challenging the order taking judicial notice of these documents from the Patent Action. If so, his claim is not well taken. He makes only the general, conclusory argument that defendants failed to show defects on the face of the TAC, but as shown above, a demurrer may be based on judicially noticeable information. Further, plaintiff's contention the demurrer is based "solely on extrinsic evidence" is not accurate. Plaintiff cannot prevail on this issue.

3. Statute of Limitations

"The limitations period, the period in which a plaintiff must bring suit or be barred, runs from the moment a claim accrues." (*Snyder v. California Ins. Guarantee Assn.* (2014) 229 Cal.App.4th 1196, 1208.) A cause of action generally accrues "when

[it] is complete with all of its elements’—those elements being wrongdoing, harm, and causation.” (*Ibid.*) The statute of limitations is triggered once the last of these elements has occurred. (*Ibid.*)

Here, the pleadings reveal plaintiff’s claims arose no later than the summer of 2012 and likely as early as 2004. Plaintiff alleged he disclosed the alleged trade secrets to Intel in 2004. According to the TAC defendants lied to plaintiff in 2004 to induce him to make the disclosure so Intel could steal the secrets. Plaintiff alleged that in summer 2012 when he accused defendants of wrongdoing, they denied it.

In the SAC, in referring to an April 2012 letter he sent to Intel, plaintiff alleged he was “following up on INTEL and Delta encounters of 2004 and 2007 and whether INTEL was an indirect infringer on the ’512 US Patent with using language as if he actually knows that Intel is using the US Patent ’512 technologies in fact.” He deleted this language in the TAC.

But as shown above, if a party omits a harmful allegation without a good explanation, the court must take judicial notice of that harmful allegation. (*Smyth v. Berman, supra*, 31 Cal.App.5th at p. 195.) Plaintiff gives no plausible explanation, instead admitting he was questioning whether Intel was an “indirect infringer.” Plaintiff repeatedly tries to distinguish between a direct and indirect infringer but does not explain why that distinction makes a legal difference. According to the unattributed authority in plaintiff’s opening brief, indirect infringement is also actionable. (35 U.S.C. § 271(c).)

Moreover, although that allegation was omitted, there were other consistent allegations of the same conduct in the TAC. For example, in his opposition to the demurrer, plaintiff attached an August 2012 letter from Intel’s attorney, of which the court took judicial notice, which stated “[n]o aspect of any of Intel’s product has been derived from any information Intel allegedly received from you.” In the TAC plaintiff alleged that, upon his purchase of the Intel CPU Cooler, he was surprised by Intel’s “straight lies” in 2012.

In addition, the allegation the Intel CPU Cooler infringes on the alleged trade secret further confirms a 2012 accrual date. The June 2011 report by ATI's expert in the Patent Action, of which the court took judicial notice, shows the Intel CPU Cooler was at issue in the case. Plaintiff's protest that Intel was not a party to the Patent Action is not persuasive. That is not the test. The question is when plaintiff had knowledge or a suspicion defendants had engaged in wrongdoing.

Plaintiff continues to insist the court was "guessing" he had notice of Intel's alleged wrongdoing in 2012. There was no guessing involved. Rather, based on the allegations made, it is reasonable to infer plaintiff was at the least suspicious of Intel at that time.

Although not citing it by name, plaintiff appears to be relying on the discovery rule to delay accrual of his claims. He argues he did not know of defendants' alleged wrongdoing until 2015 when he purchased the Intel CPU Cooler. This argument fails for several reasons.

"An exception to the general rule of accrual is the delayed discovery rule, 'which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action.' [Citation.] 'Under the discovery rule, the statute of limitations begins to run when the plaintiff suspects or should suspect that [his] injury was caused by wrongdoing, that someone has done something wrong to [him].' [Citation.] 'A plaintiff need not be aware of the specific "facts" necessary to establish the claim; that is a process contemplated by pretrial discovery. Once the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, [he] must decide whether to file suit or sit on [his] rights. So long as a suspicion exists, it is clear that the plaintiff must go find the facts; [he] cannot wait for the facts to find [him].'" (*Stella v. Asset Management Consultants, Inc.* (2017) 8 Cal.App.5th 181, 191-192.)

"The discovery rule only delays accrual until the plaintiff has, or should have, inquiry notice of the cause of action. The discovery rule does not encourage

dilatory tactics because plaintiffs are charged with presumptive knowledge of an injury if they have ““information of circumstances to put [them] *on inquiry*”” or if they have ““the opportunity to obtain knowledge from sources open to [their] investigation.””” (Fox v. Ethicon Endo-Surgery, Inc. (2005) 35 Cal.4th 797, 807-808, fn. omitted.)

The allegations described above show plaintiff was suspicious or should have been suspicious of wrongdoing by defendants by the summer of 2012 at the latest. He had accused Intel of stealing his alleged trade secrets by that time. Plaintiff relies on his allegation he did not actually discover the wrongdoing until he purchased the Intel CPU Cooler in 2015. But that allegation contradicts other allegations, including the information in judicially noticed documents from the Patent Action.

In addition, it does not satisfy the requirement in pleading delayed discovery that plaintiff was unable to ““have made earlier discovery despite reasonable diligence.”” (WA Southwest 2, LLC v. First American Title Ins. Co. (2015) 240 Cal.App.4th 148, 157.) In ruling on the demurrers to the FAC and SAC the court discussed delayed discovery and in the order sustaining the demurrer to the SAC it explained plaintiff needed to allege facts “demonstrating an inability to make earlier discovery.” Plaintiff never did so.

He claims he satisfied his diligence requirement by allegations he used a Google search alert, which would generate e-mail alerts on “any information about CPU Cooler produced or come to the market,” and attached more than 50 pages of Google alerts he received. He alleged no CPU coolers had an Intel Logo.

But there is no allegation he could not have purchased the Intel CPU Cooler before he did. Merely using a Google search alert is not a thorough or sufficient search. And, as defendants point out, diligence would have included plaintiff reading the report of the expert in the Patent Action, which stated the Intel CPU Cooler was at issue. (Fox v. Ethicon Endo-Surgery, Inc., *supra*, 35 Cal.4th at pp. 807-808 [plaintiff presumed to know of injury if able to learn information from documents available to him]; WA

Southwest 2, LLC v. First American Title Ins. Co., *supra*, 240 Cal.App.4th at p. 157 [demurrer sustained based on statute of limitations because “ignoring a private placement memorandum received prior to making an investment” not reasonable diligence].)

Further, plaintiff’s argument in his brief contradicts his claim he was diligent. He asserts he purchased the Intel CPU Cooler “by Chance while surfing the web . . . out of curiosity.” This does not demonstrate plaintiff was actively investigating potential wrongdoing by defendants.

In sum, plaintiff suspected defendants had committed wrongdoing by summer of 2012 at the latest. He did not file his action until October 2016, more than four years later. Four years is the maximum statute of limitations for the claims alleged.⁵ Thus, the claims are all barred by the statute of limitations.

4. Other Defects in Causes of Action

The court also sustained the demurrer on additional grounds specific to the various causes of action.

a. Misappropriation of Trade Secrets

A trade secret is information that “[d]erives independent economic value, actual or potential, from not being generally known to the public.” (Civ. Code, § 3426.1, subd. (d)(1).) In properly pleading misappropriation of a trade secret, a plaintiff must allege facts that show “the existence of subject matter which is capable of protection as a trade secret.” (*Diodes, Inc. v. Franzen* (1968) 260 Cal.App.2d 244, 250.) In sustaining the demurrer the court ruled plaintiff had not pleaded a trade secret, “only a patent, which is already public knowledge.”

⁵ The appropriate statutes of limitations are: Civil Code section 3426.6 (three years for misappropriation of trade secrets); Business and Professions Code section 17208 (four years for unfair competition); and Code of Civil Procedure sections 337 (four years for breach of written contract); 339 (two years for breach of oral or implied contract); 338 (three years for fraud); and 343 (four years for remaining claims).

In opposition, plaintiff claims there is a difference between the '512 Patent and the alleged trade secrets and that he pleaded the alleged trade secret with sufficient particularity. But he fails to explain where and how he did so. A review of the TAC shows the allegations as to the '512 Patent and the alleged trade secrets are nearly identical. The '512 Patent is allegedly “an umbrella to many Trade Secrets technologies and Intellectual Property using two-phase cooling to cool electronics or heat source with many different applications,” while the alleged trade secrets are described as “protected conceptual designs and the Know-How of using two phase cooling in cooling high heat dissipation, high speed CPUs.” In addition, allegations about the Intel CPU Cooler do not specify how it infringes on plaintiff’s alleged trade secret or why it differs from the '512 Patent. The pleading was insufficient.

b. Breach of Express and Implied Contracts

To sue for breach of contract, the plaintiff must necessarily be a party to the contract or be a third party beneficiary. The court ruled and the TAC shows the contracts that are the subject of these causes of action were between Intel and Delta, not plaintiff. Plaintiff argues only that Delta was a fictitious name for ATI and American Innovation Corporation is the successor to ATI. This does not cure the defect.

c. Fraud, Breach of Fiduciary Duty and Unfair Competition

The court correctly ruled these three causes of action were preempted by Civil Code section 3426.7. (*K.C. Multimedia, Inc. v. Bank of America Technology & Operations, Inc.* (2009) 171 Cal.App.4th 939, 954, 958 [“section 3426.7, subdivision (b), preempts common law claims that are ‘based on the same nucleus of facts as the misappropriation of trade secrets claim for relief’”].)

The causes of action at issue are based on the same allegations as those set out in the misappropriation of trade secrets cause of action, to wit, the alleged improper use of plaintiff’s alleged trade secrets.

In addition, plaintiff admitted in his opening brief these claims are preempted. Plaintiff asserts he sought to bifurcate the causes of action and maintains the court “ordered [that issue] to be for future motion.” What the court ruled, in sustaining the demurrer to the SAC, was “preemption will be reserved for future motions as need be.” In any event, it is irrelevant. When a claim is preempted, it cannot be tried either with the trade secrets claim or in a separate trial.

d. Implied Covenant of Good Faith

The trial court ruled that except for claims involving first party insurance coverage, there is no “stand-alone cause of action” for breach of the implied covenant of good faith and fair dealing. “The implied covenant of good faith and fair dealing rests upon the existence of some specific contractual obligation.” (*Avidity Partners, LLC v. State of California* (2013) 221 Cal.App.4th 1180, 1204.) Here, because there are no contracts to which plaintiff is a party, there is no implied covenant.

e. Conspiracy

As the trial court ruled, there is no independent civil cause of action for conspiracy. (*Smyth v. Berman, supra*, 31 Cal.App.5th at pp. 191-192.) Instead, it is a derivative claim based wholly on an underlying wrongful act. (*AMN Healthcare, Inc. v. Aya Healthcare Services, Inc.* (2018) 28 Cal.App.5th 923, 949.) Because there are no viable claims on which to base a claim for conspiracy, this “cause of action” must fail.

5. Procedural Claims

Plaintiff contends the court violated Code of Civil Procedure section 430.4, subdivision (b) (erroneously cited as section 430.41(4)(c)). This prohibits a demurring party from demurring to an amended pleading on a ground that could have been raised in a demurrer to an earlier version of the pleading. Plaintiff fails to make any argument or explain how this section was allegedly violated. This argument is forfeited for lack of reasoned legal argument. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

Plaintiff also argues the court erred because it did not order the parties to confer after it sustained defendants' demurrers. But Code of Civil Procedure section 430.41, subdivision (c), on which plaintiff relies, does not require such a conference; it merely allows the court to order one ("the court *may* order a conference"; italics added).

6. *Leave to Amend*

To be granted leave to amend, a plaintiff must demonstrate how the complaint could be pleaded to state a valid cause of action. (*Schifando, supra*, 31 Cal.4th at p. 1081.) "To satisfy that burden on appeal, a plaintiff "must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading." [Citation.] . . . The plaintiff must clearly and specifically set forth the "applicable substantive law" [citation] and the legal basis for amendment, i.e., the elements of the cause of action and authority for it. Further, the plaintiff must set forth factual allegations that sufficiently state all required elements of that cause of action. [Citations.] Allegations must be factual and specific, not vague or conclusionary. [Citations]'" (*Rosberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th 1481, 1491.)

Although unclear, it appears plaintiff may be obliquely asking us to reverse the ruling sustaining the demurrer without leave to amend. If this is the case, the request is inadequate. He has not shown what he would allege if given the opportunity to do so or that he could validly amend the TAC to state any viable claim. He has had four opportunities to plead a sufficient complaint and has been unable to do so, even when the court explained what allegations were necessary. He has not shown that he would be successful if given another try.

DISPOSITION

The judgment is affirmed. Defendants are entitled to costs on appeal.

THOMPSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

FYBEL, J.